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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

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Date:

AUG 15 2011

Office: DETROIT

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Detroit, Michigan and a subsequent appeal was dismissed by the AAO. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be denied.

The record indicates that the applicant is a native and citizen of Senegal who entered the United States on May 28, 1994 as a B-2 visitor with authorization to remain until November 27, 1994. On December 19, 2002, the applicant properly filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), based on the Form I-130, Petition for Alien Relative (Form I-130), filed on her behalf by Mr. [REDACTED]. After being granted Advance Parole, the applicant departed the United States, thereby triggering the unlawful presence provisions of the Act. Accordingly, the applicant was unlawfully present in the United States from April 1, 1997, the effective date of the unlawful provisions of the Act, until December 19, 2002, the date on which she filed the Form I-485.¹ The applicant was thus found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 4, 2006.

On appeal, the AAO concurred with the district director that extreme hardship to a qualifying relative had not been established as required by section 212(a)(9)(B)(v) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated April 1, 2009.

On April 29, 2009, previous counsel for the applicant filed the Form I-290B, Notice of Appeal or Motion to the Administrative Appeals Office (Form I-290B). On the Form I-290B, in Part 2, previous counsel for the applicant indicated that the applicant was filing a motion to reconsider by marking box E. *Form I-290B*, dated April 29, 2009.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel for the applicant states that the previously filed Form I-290B was dismissed by the AAO because former counsel indicated that he would send a brief and/or evidence to the AAO and this was not done and as such, counsel is providing additional documentation in support of extreme

¹ The pendency of an affirmative application for adjustment of status is designated as a period of stay authorized by the Secretary of Homeland Security, during which an applicant does not accrue unlawful presence.

hardship to the applicant's U.S. citizen spouse. *See Brief for Motion for Reconsideration*, dated April 29, 2009. The applicant has failed to establish that the decision of the AAO to dismiss the appeal was based on an incorrect application of law or Service policy, based on the evidence of record at the time of the decision. The motion will therefore be denied in accordance with 8 C.F.R. § 103.5(a)(4).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be denied.

ORDER: The motion is denied.